

MINUTES

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

1/20/2006 4:30 pm

SUE BEITIA, CLERK

CASE NUMBER: CV 03-00385SOM-LEK

CASE NAME: Wayne Berry vs. HI Express Service, Inc., et al.

ATTYS FOR PLA: Timothy Hogan

ATTYS FOR DEFT: Eric Liebler
Damian Capozzola
Lex Smith
Thomas Yee
Lyle Hosoda
Raina Mead

INTERPRETER:

JUDGE: Susan Oki Mollway

REPORTER: Debra Chun

DATE: 1/20/2006

TIME: 2:00 - 4:15

COURT ACTION: EP: Motions in Limine; Defendants Mark Dillon, Teresa Noa, Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfreda Waiolama, and Jacqueline Rio's Joinder to all of the Motions in Limine Filed by the Post Confirmation Trust for Fleming Companies, Inc.'s on January 3, 2006 -

Arguments.

Plaintiff Wayne Berry's Motion in Limine to Exclude Evidence of Deductible Expenses and Barring Any Testimony from the PCT's Experts (675) - Denied with respect to Kinrich and financials, and Deferred with respect to Dr. Walker.

Plaintiff Wayne Berry's Motion in Limine to Exclude Evidence of Mr. Berry's Alleged Vendetta (685) - Granted to the alleged vendetta, but conditioned on plaintiff not raising issues about the vendetta.

Plaintiff Wayne Berry's Motion in Limine to Exclude Evidence of the Location of Atlantic Pacific International, Inc.'s Business Records (677) - Granted.

Plaintiff Wayne Berry's Motion in Limine to Exclude Evidence of Prior Unrelated Judgment Against Plaintiff and His Finances (680) - Granted.

Plaintiff Wayne Berry's Motion in Limine to Exclude Expert Testimony of Jeffrey Kinrich Regarding Matters Not Contained in His Expert Report (682) - Granted in part and Denied in part. The opinion by Kinrich relating to the \$300,000 offer by Mr. Berry to sell the software is excluded; and motion is denied in all other respects.

Plaintiff Wayne Berry's Motion in Limine to Exclude Expert Testimony of Bradley Dechter (688) - Denied.

Plaintiff Wayne Berry's Motion in Limine to Exclude Testimony of Jack Borja and Ralph Stussi (684) - Denied but Mr. Hogan entitled to take the deposition of Mr. Borja at anytime before he testifies. Defendants to give Mr. Hogan the contact information for Mr. Borja.

Defendant PCT's Motion in Limine No. 1 (To Limit Testimony of Wayne Berry) (694) - Denied without prejudice to specific objections.

Defendant PCT's Motion in Limine No. 2 (To Exclude Thomas Ueno) (696) - Denied, but Mr. Ueno must be made available for a deposition for the December 2005 supplemental opinion.

Defendant PCT's Motion in Limine No. 3 (To Exclude Reference to Certain Testimony by Mark Dillon) (698) - Denied.

Defendant PCT's Motion in Limine No. 4 (To Exclude Evidence or Argument That Any Infringement Has Been Willful and to Require Reference to the Instance Infringement as "Inadvertent" or "Innocent") (700) - Granted in part and Denied in part. Granted insofar as plaintiff is not to refer to any infringement as to which it seeks damages as willful; Denied in all other aspects.

Defendant PCT's Motion in Limine No. 5 (To Exclude or Limit the Testimony of Dr. Philip Johnson) (702) - Granted with respect to plaintiff's case in chief, and Reserved with respect to rebuttal.

The Post Confirmation Trust for the Fleming Companies, Inc.'s Motion in Limine No. 6 Regarding Alleged Unrelated Bad Acts (704) - Denied with respect to evidence of potential sale of software to Kmart and with respect to API insofar as API's profits relate to causation of damages, but Granted in all other respects.

The Post Confirmation Trust for the Fleming Companies, Inc.'s Motion in Limine No. 7 Regarding Evidence Pertaining to Guildance Software, Inc. and C & S Logistics of Hawaii, LLC, C & S Wholesale Grocers, Inc., C & S Acquisitions, LLC and ES3, LLC

(706) - Denied with respect to Kraft and API insofar as that evidence concerns value of software or causation of damages, but Granted in all other respects.

The Post Confirmation Trust for the Fleming Companies, Inc.'s Motion in Limine No. 8 to Exclude the May 5, 2003 Email from Ron Griffin to Brian Christiansen (708) - Denied.

The Post Confirmation Trust for the Fleming Companies, Inc.'s Motion in Limine No. 9 Regarding Motion to Exclude Evidence Regarding Software Which is Not the Subject of this Case (710) - Withdrawn re: spreadsheets that Dillon prepared after Fleming stopped using Mr. Berry's software, and Granted with respect to Plaintiff's case in chief.

Discussion held re: Mr. Smith's letter re: witness Mr. Dechter.

Mr. Smith to talk to Mr. Dechter about his availability to testify.

Opening statements: all parties' opening statements combined are anticipated to last less than one hour.

Discussion held re: vicarious infringement - parties may submit memorandums to the Court by Monday 1/23/06.

Submitted by: Toni Fujinaga, Courtroom Manager.